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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 7814 of 2022

Jiya Rahaman Sekh & Ors.
Vs.
Food Corporation of India & Ors.

Mr. Soumya Majumder
Ms. Shagun Baid
... For the petitioners.

Mr. Kamal Kumar Chattopadhyay
... For the respondent nos. 1 to 4.

The instant writ petition has been filed *inter alia* praying for a direction upon the respondent nos. 1 to 5 to make payment of the outstanding wages due and payable to the petitioners for the period August, 2021 till March, 2022.

The writ petitioners claim to be the security guards, employed by the respondent no.6. It is the petitioners' case that they were posted at Bhatjungla and Kalirhat depots of the respondent no.1. The petitioners say that there was a subsisting contract between the respondent no.1 on the one hand and the respondent no.6 on the other where under the respondent no. 6, had been engaged to provide the security services at various depots of the respondent no.1. The petitioners say that the petitioners are the contract labourers employed by the respondent no.6 and the respondent no.1 is the principal employer. It is the petitioners' case that although the petitioners are discharging their duties as security guards in the various depots of the respondent no.1, the respondent no.6, all on a sudden stopped making payment of wages since August 2021. This prompted the writ petitioners to proceed and lodge a complaint before the Assistant Labour Commissioner. From time to time various meetings were held before the office of the Assistant Labour Commissioner and in the meeting held on 23rd February, 2022, the FCI management stated that they will process for payment all outstanding dues, provided the workers vacate site immediately.

Mr. Majumder, learned advocate representing the writ petitioners submits since the legitimate dues of the writ petitioners have not been paid, the present writ petitioner has been filed.

Referring to Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970, it is submitted that although it is the primary obligation of the contractor to make payment of the wages payable to the labourers employed by the contractor yet in case of failure on the part of the contractor, the principal employer shall be liable to make payment of such wages or the unpaid balance as the case may be. It is still further submitted that the provisions of the Employees' State Insurance (General) Regulations, 1950, which *inter alia* defines the employer as the principal employer, as defined in the

Employees' State Insurance Act, 1948, casts a statutory duty and obligation on the principal employer to maintain a register of employees.

Drawing attention of this Court to the attendance sheets, counter-signed by the respondent no.6, as also by the Managers of the respondent no.1 concerning both Bhatjungla and Kalirhat, depots, it is submitted that the respondents notwithstanding confirming attendance of the petitioners in respect of the aforesaid depots for the period between August, 2021 and March, 2022, no payment therefor has been disbursed by the respondent no.6. Mr. Majumder has also placed reliance on the bills/invoices raised by the respondent no.6, on the respondent no.1, in relation to the security guards services, for the period between August, 2021 to January, 2022 for Bhatjungla. In so far Kalirhat is concerned, he has also relied on the bills/invoices raised by the respondent no.6 on the respondent no.1, for the period between August, 2021 to December, 2021. Mr. Majumder submits that on the failure of the respondent no.6 to make payment, it is the obligation of the respondent no.1, as the principal employer to make payment of the wages to the petitioners who have duly discharged their services, which have also been certified by the managerial staff of the respondent no.1. It is still further submitted on behalf of the petitioners that this Hon'ble Court in exercise of it extraordinary writ jurisdiction is competent to direct disbursal of the admitted dues of the writ petitioners, especially when the same does not concern any disputed questions of fact. Mr. Majumder submits that the claim of the writ petitioners has already been quantified and there can be no dispute in that regard. In support of the proposition that there is no bar to entertain an application under article 226 of the Constitution of India unless serious disputed questions are involved and the High Court is well within its powers to direct disbursal of the petitioners claim, reliance is placed on a judgment delivered by the Hon'ble Supreme Court in the case **ABL International Ltd. & Ors. Vs Export Credit Guarantee Corporation of India Ltd. & Ors**., reported in **(2004) 3 SCC 553** and the judgment delivered by the Hon'ble Supreme Court in the case of **Hari Krishna Mandir Trust vs. State of Maharashtra & Ors**., reported in **AIR 2020 SC 3969.** It is submitted that in the facts as stated hereinabove, this Hon'ble Court may please to direct the respondent no.1 to make payment of the legitimate dues of the petitioners.

Per contra, Mr. Chattopadhyay, learned advocate representing the respondent nos. 1 to 4 submits that consequent upon issuance of a notice dated 20th July, 2021, the contractual relationship between the respondent no.6 and the respondent no.1 come to an end.

He says that with effect from 20th July, 2021 the service of the respondent no.6 has been dispensed with, both at Bhatjungla and at Kalirhat depots, by the competent authority of the respondent no.1. Drawing attention of this Court to the letter dated 20th July, 2021, it is submitted that by such letter, the respondent no.1 had categorically called upon the Chief Executive Officer of the respondent no.6 to withdraw their security staff with immediate effect and it was further clarified in the said letter that no further charges/payments will be made to the respondent no.6 and that FCI shall stand absolved of all liabilities towards the respondent no.6 and their staffs from the aforesaid date. Mr. Chattopadhyay, says that subsequent to 20th July, 2021, the respondent no.1 no longer remained the principal employer and as such counter-signing of the attendance register by the managerial staff of FCI is of no consequence. He further says that the signature of the managers, on the aforesaid attendance registers has been taken forcibly. Drawing attention of this Court to another letter dated 18th May, 2022 signed by the depot manager at Kalirhat, it is submitted that the said manager had by the aforesaid letter categorically informed the management of the respondent no.1, that his signature on the attendance register for the months of December, 2021 to January, 2022 and February, 2022 had been obtained by “gherao” in extreme pressurized situation on 5th April, 2022, beyond office hours. By relying on the aforesaid letter, he says that the attendance registers have no value as signatures on the aforesaid registers have been obtained subsequently. He says that show cause notices have already been issued on the depot managers of both Bhatjungla and Kalirhat depots, so as to explain, why necessary action shall not be taken against them for counter-signing the attendance registers. It is still further submitted that the present writ petition concerns disputed questions of fact, which cannot be gone into or decided by this Hon'ble Court in exercise of extraordinary writ jurisdiction. He says that the writ petitioners need to prove that they had worked for the respondent no.1 in order to be entitled to any wages. There is no scope to lead evidence before this Hon'ble Court and, as such, this Hon'ble Court ought not to entertain the instant writ petition. It is still further submitted that after dispensing the service of the respondent no.6, the respondent no.1 has no responsibility to make payment. Mr. Chattopadhyay further submits that the writ petitioners have already made a reference before the Assistant Labour Commissioner and the final outcome thereof is awaited. In support of his contention that this Court, ought not to entertain the writ petition which concerns disputed questions of fact, he places reliance on a judgment delivered by the Hon'ble Supreme Court in the case of **Sanjay Kumar Jha vs. Prakash Chandra Chaudhary &**

Ors., reported in **(2019) 2 SCC 499**. He says that the present writ petition should be dismissed with costs.

I have heard the submissions of the learned advocates appearing for the respective parties and considered the materials on record. I find that the respondent no.1 has not disclaimed the fact that the writ petitioners had been appointed by the respondent no.6 and were discharging their duties in two several depots of the respondent no.1 at least till 20th July, 2021. I find that the respondent no.1 has relied on notice dated 20th July, 2021 in order to demonstrate that the relationship between the respondent no.1 and the respondent no.6 was snapped. I, however, find that the respondent no.1 has also disclosed an agreement entered into by and between the respondent no. 1 and the respondent no.6. The said agreement is for a limited period. Mr. Chattopadhyay has, however, categorically submitted that the said agreement, which is at page 39 of the report, which was valid for a period of two years with effect from 4th April, 2012 has only been extended once. Admittedly, however, the respondent no.1 has not denied continuance of contractual relationship with respondent no.6 at least upto 20th July, 2021. Records would reveal that notwithstanding issuance of the letter dated 20th July, 2021, the managers of the respondent no.1 continued to certify attendance of the employees engaged by the respondent no.6. Such certification, is both in respect of Bhatjungla and Kalirhat depots, for the period August, 2021 to March, 2022. From the copies of the invoices raised on the respondent no.1, by the respondent no.6 which are annexed to the writ application, it would appear that notwithstanding respondent no.1 contending that the relationship between the respondent no.1 and the respondent no.6 having been severed, the respondent no.6 continued to raise bills/invoices for providing security service at least for the period upto December, 2021 concerning Kalirhat depot and January, 2022 for Bhatijangla depot. The aforesaid bills/invoices were also certified by the officials of concerned depot manager of the respondent no.1. It is, therefore, difficult to accept that the letter dated 20th July, 2021 was acted upon by the parties or that no contractual relationship subsisted between the respondent no. 1 and the respondent no.6, immediately on the issuance of letter dated 20th July, 2021. Although an attempt has been made by the learned advocate representing the respondent no.1, in course of arguments, to dilute the factum of issuance of the aforesaid certificates by *inter alia* claiming that such document has been obtain by coercion, no FIR appears to have been lodged and no steps appears to have been taken against the aforesaid persons, who have counter-signed and certified the aforesaid invoices. The show-cause notice relied on and referred to by the learned advocate for the respondent no.1 is only concerning the depot managers, for having certified the attendance register. I find, that in connection with a complaint lodged with the Assistant Labour Commissioner, in course of a meeting, the respondent no. l has admitted that they shall process payment of all outstanding dues provided the workers vacate the site immediately. As regards the aforesaid minutes of the meeting held before the Assistant Labour Commissioner, Mr. Chattopadhyay has tried to explain the said document, by contending that the same was only limited to the admissible dues. In the factual backdrop as aforesaid no person of ordinary prudence would believe that on issuance of the letter dated 20th July, 2021, the relationships between the respondent no.1 and respondent no.6 stood snapped.

On the contrary, I find that there is a subsisting contractual relationship between the respondent no.1 and the respondent no.6, even after 20th July, 2021 at least till March, 2022, insofar as the aforesaid two depots of the respondent no.1 are concerned. I find that the depot managers of the respondent no.1 had also counter-signed the attendance register of FCI for the period between August, 2021 and March, 2022. From the document on record, only one of the depot manager of respondent no.1 (Kalirhat) had claimed, that too, on 5th April, 2022 that his signatures were forcibly obtained on the attendance register for the period December, 2021, January, 2022 and February, 2022. The aforesaid document has come to light only in the affidavit filed by the respondent no.1, subsequent to filing of the writ application. In so far as Bhatjungla depot is concerned, admittedly the depot manager has not lodged any complaint even with the respondent no.1. I find that the respondent no.1 having admitted before the Assistant Labour Commissioner to clear the legitimate dues of the respondent no.6, an obligation is cast upon the respondent no.1 to *ad here* to the same. Although the respondent no.1 has attempted to make out a case that the present writ application concern disputed questions of fact, I am not inclined to accept the same for reasons discussed above and especially when, the depot managers of the respondent no.1 have certified, not only their attendance of the petitioners but also the invoices raised by the respondent no.6. A strong presumption, is thus raised in favour of the petitioners of having discharged their duties in the aforesaid two depots of the respondent no.1.

In the facts as stated above, I am of the view that the writ petitioners are entitled to be paid their minimum entitlements in the form of wages, for discharging their duties in the aforesaid two depots of the respondent no.1. In a dispute, intersee between the respondent no.1 and the respondent no.6, the petitioners cannot be made to suffer. The petitioners have a statutory right to enforce their claim as against the respondent no.1 as the principal employer. I find that at the admission stage, the respondents had volunteered to file affidavits. No objection as to the maintainability of the writ petition was raised. In my view it would be travesty of justice, if at this stage, the petitioners are directed to avail ordinary remedy.

In such circumstances, I direct the respondent no.2 to make payment of the legitimate dues of the petitioners on the basis of the bills raised by the respondent no.6 which have been duly certified by the officials of the respondent no.1 which are at page nos. 53 to 74 of the writ application for the period from August, 2021 to January, 2022 in respect of Bhatjungla depot and from August, 2021 to November, 2021 for Kalirhat depot.

Since the aforesaid direction is passed in terms of Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970, the respondent no.1 shall be entitled to recover the same from the respondent no.6.

With the aforesaid observations and directions, the writ petition, being WPA 7814 of 2022 stands disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)